

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WILLIAM LEE THIETJE,

Petitioner, Civil No. 08-958-AA

v. ORDER

MARK NOOTH,

Respondent.

AIKEN, District Judge.

Petitioner, an inmate in the custody of the Oregon Department of Corrections, filed a petition for habeas corpus relief under 28 U.S.C. § 2254 challenging his convictions on charges of rape, sodomy and kidnapping on various grounds.

The only claim remaining is Ground One of petitioner's Amended Petition (#33). See, Order (#38) entered January 7, 2010.

In Ground One, petitioner claims that his Fifth, Sixth and Fourteenth Amendment rights were violated when he "was convicted by a less than unanimous jury on Counts 1 through 3." Amended Petition (#33), p. 4.

The United States Supreme Court specifically addressed Oregon's statute permitting jury convictions by 10 out of 12 jurors in *Apodaca v. Oregon*, 406 U.S. 404 (1972). In that case, the Court held that the Oregon system was constitutional, explaining: "A requirement of unanimity, however, does not materially contribute to the exercise of commonsense judgment. As we said in *Williams*, a jury will come to such a judgment as long as it consists of a group of laymen representatives of a cross section of the community who have the duty and the opportunity to deliberate, free from outside attempts at intimidation, on the question of defendant's guilt." *Id.*, at 410-411.

Thus, the non-unanimous verdicts in petitioner's trial did not violate any clearly established Supreme Court precedent and fails to establish entitlement to habeas corpus relief under 28 U.S.C. § 2254.

Summary: Petitioner's Ground One fails as a matter of law; petitioner's Ground Two is procedurally defaulted; petitioner's Ground Three fails on the merits. Petitioner's Amended Petition (# 33) is denied. This proceeding is dismissed.

IT IS SO ORDERED

DATED this 20 day of April, 2010.

s/ Ann Aiken

Ann Aiken

United State District Judge